IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1005 OF 2007

Nicholas Employees Co-operative
Credit Society Ltd.,
C/o. No.9, Vijayalaxmi Co-op. Housing
Society, Lala Lajpatrai Path, Tilaknagar,
Dombivli (E), Dist.Thane-421 201. ...Petitioner.

Vs.

1. Union of India ,
   through the Ministry of Law
   and Justice, Aaykar Bhavan Annexe,
   New Marine Lines, Churchgate,
   Mumbai-400 020.
2. The Department of Post and Telegraph,
   Union of India, New Delhi.
3. The Superintendent of Post Offices,
   North East Division, Bhandup,
   Mumbai-400 042.
4. The Ministry of Finance,
   Department of Economic Affairs,
   Union of India, New Delhi. ...Respondents.

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Mr.Aditya Chitale for the Petitioner.
Mr.Rui A. Rodrigues with Ms. Rutuja Ambekar for the Respondents.

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CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

Judgment reserved on : October 5, 2007.
Judgment pronounced on : October 23, 2007.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.) :

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent

of Counsel and at their request taken up for hearing and final disposal.

2. The Petitioner before the Court is a Co-operative Society, registered under the Maharashtra Co-operative Societies' Act, 1960, consisting of the employees of Nicholas Piramal India Ltd. On or about 8th March 1996, the Petitioner invested an amount of Rs.2 lakhs in Kisan Vikas Patra Certificates ("KVPs") issued by the Department of Posts and Telegraphs and the Superintendent of Post Offices, North East Division, Bhandup (the Second and Third Respondents) under the provisions of the Government Savings Certificates Act, 1959. The certificates stipulated that a sum of Rs.4 lakhs would be paid to the Petitioner on 8th September 2001 upon the expiry of a period of five years and six months from the date of the issuance of the certificates. On 2nd July 1997, a further amount of Rs.6 lakhs was invested by the Petitioner against which KVP Certificates were issued on behalf of the Second and Third Respondents. Upon maturity on 2nd January 2003, an amount of Rs.12 lakhs was to be paid to the Petitioner. Upon the certificates maturing for payment, the Petitioner

approached the Second and Third Respondents. The Second and Third Respondents declined to pay the amount represented in the certificates upon maturity, namely, Rs.4 lakhs and Rs.12 lakhs respectively on the ground that the certificates had been irregularly issued. The contention of the Respondents was that after the KVP Rules were amended in 1995, only two categories of certificate holders were contemplated, namely, (i) an adult for himself or on behalf of the minor; and (ii) a trust. The Petitioner was neither.

3. Between 12th September 2001 and 16th May 2006, as many as thirteen representations were addressed by the Petitioner to the Respondents. The contention of the Petitioner was that the amount deposited was accepted without demur and the authorities proceeded to issue KVP certificates in favour of the Petitioner promising to pay a stipulated amount on maturity. Neither was any irregularity pointed out to the Petitioner at the time of the investment, nor for that matter, during the term of the deposit. In substance, therefore, the case of the Petitioner was that it was unjust and arbitrary not to pay the amount represented by the maturity value of the certificates.

4. Initially, the Department of Posts informed the Petitioner on 21st January 2002 that the certificates that were issued to the Petitioner were “irregular” and the proposal for regularization had been sent to the Circle Office. In a subsequent letter dated 1st April 2002, the Petitioner was called upon to discharge the certificate at the original face value together with interest at the Savings Bank rate. On 23rd August 2002, the Third Respondent informed the Petitioner that the Directorate had conveyed the approval of the Ministry of Finance to regularize the certificates issued to the Petitioner subject to the condition that only the invested amount would be repaid without any interest. This was followed by letters dated 10th October 2002, 24th October 2004 and 26th September 2006.

5. It has been averred in the petition that in the year 2002, the Petitioner was constrained to accept an amount of Rs.8 lakhs representing the face value of the investment made in view of the poor financial condition of the Petitioner.

6. These proceedings have been initiated under Article 226 of the Constitution of India, in order to seek an appropriate writ, quashing and setting aside the communication issued by the Respondents and for a direction to pay the interest as represented in the certificates issued to the Petitioner. The contention of the Petitioner is that despite the amendment in 1995 to the Rules governing KVP Certificates, the deposits made by the Petitioner were accepted in 1996 and 1997. The Respondents having accepted the deposits for the full tenure of five years and six months they cannot, it is submitted, be allowed to contend that the full maturity value will not be paid to the Petitioner. Such an action, it is submitted, would be arbitrary and ultra vires. The Respondents, it is submitted, would be estopped from denying their obligation to repay the full maturity value of the certificates and to allow an instrumentality of the Union of India to do so would be unjust. Reliance has been placed on the judgment of this Court in **Romeo Sam Arambhan vs. Union of India**, 2004(1) Mh. L.J. 56 and on an unreported judgment in **Mulund Ambe Maiya Co-operative Housing Society Ltd. vs. Union of India** (Writ Petition 3392 of 2004 decided by the Division Bench on 9th October 2006).

7. An affidavit in reply has been filed in these proceedings by the Third Respondent. In the affidavit in reply, it is not denied that an amount of Rs.2 lakhs was invested by the Petitioner on 8th March 1996 and Rs.6 lakhs on 2nd July 1997 against which KVP Certificates were issued to the Petitioner. However, it has been submitted in the affidavit in reply that with effect from 1st April 1995, investment in KVPs in the name of a Company/Firm/Society was discontinued by the Government of India. In the present case, it has been stated that KVPs were regularized in the name of the Petitioner subject to the condition that the Petitioner would be paid only the amount invested on maturity. The Respondents relied upon the judgment of the Gujarat High Court in **Devang Co-operative Housing Society vs. Sub Post Master** (Special Civil Application 2877 of 2003). According to the Respondents, the Petitioner while applying for KVP Certificates had agreed to abide by the KVP Rules, 1988. Under a notification dated 8th March 1995 issued by the Department of Economic Affairs, (which came into force on 1st April 1995), a certificate can be issued only to (i) an adult or on behalf of a minor, or to a minor, and/or (ii) to

a Trust. Accordingly, it has been submitted that the Petitioner was paid the invested amount in accordance with the decision of the Ministry of Finance. According to the Third Respondent, huge receipts are issued every day for investments made in Savings Certificates in Post Offices and it is not possible to check the record due to the heavy pressure of work.

8. The Government Savings Certificates Act, 1959, is an Act to make certain provisions relating to Government Savings Certificates. Section 1(3) provides that the Act shall apply to certain classes of savings certificates and among them are Kisan Vikas Patras. In exercise of the rule making power conferred by Section 12 of the Act, the Central Government made and issued the Kisan Vikas Patra Rules in 1988. Rule 6 provides for types of certificates. On 8th March 1995, the Government of India amended the Rules. As a result, in Rule 6, the existing clause (a) of sub-rule (2) was substituted with the following provisions :

> "(a) A single Holder Type Certificate may be issued to :
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> (i) an adult for himself or on behalf of a minor or to a minor,
> (ii) a trust."

As a result of the amendment, on and after 1st April 1995, a single Holder Type Certificate may be issued to an adult for himself or on behalf of a minor or to a minor or to a trust. The provisions contained in the Rules for the issuance of a certificate inter alia to a Co-operative Society came to be deleted. There is no dispute about this position. Rule 7 stipulates that any person or body specified in Rule 6, desiring to purchase a certificate, shall present at a Post Office, an application in Form A or, as the case may be, Form A-1, in person or through an authorised agent. Under Rule 8(1), on payment being made under Rule 7, except where payment is made by a cheque, pay order or demand draft, a certificate shall be issued immediately and the date of such certificate shall be the date of payment. If a certificate is not issued immediately, sub-rule (3) of Rule 8 provides that a provisional receipt shall be given to the purchaser. Under Rule 12(1), the maturity period of a certificate of any denomination is fixed.

9. At this stage, it would be necessary to advert to the judgments of two Division Benches of this Court. In the first decision

in **Romeo Sam Arambhan vs. Union of India**,[1] Six Year National Savings Certificates of the VIIIth Issue were issued to the Petitioner. Upon the certificates maturing for payment, the Petitioner presented the certificates, but payment of the promised sum was refused on the ground that the certificates were issued through clerical oversight and mistake. It was sought to be contended that as a result of the amendment to the National Savings Certificate (VIII Issue) Rules, 1989, on 8th March 1995, a proprietary firm did not fall in one of the categories to which a single Holder Type Certificate could be issued. The Division Bench of this Court allowed the petition and issued a declaration that the Petitioner would be entitled to the principal amount represented by the NSC together with interest. The Division Bench observed thus:

> "It was for the issuing authority to have verified whether the form No.1 through which the application was made by the Petitioner for purchase of certificate was proper or not. If the Petitioner was at fault in applying in Form No.1 for purchase of certificates in the name of proprietary firm, the respondent No.3 or its concerned staff was more or in any case to be equally blamed in not verifying such application properly and not bringing to the notice of the petitioner amended Rules. If the respondent No.3 had brought to the notice of the Petitioner amended Rules which did not provide for issuance of NSC (VIII) issue in the name of firm,

1 2004(1) Mh. L.J. 56

> the Petitioner would have then and there made necessary correction in the form for issuance of Single Holder Type Certificate. Having issued the certificates to the Petitioner in the name of sole proprietorship firm, withholding the amount invested by the Petitioner for the entire period of six years and not rectifying the mistake in exercise of the powers under Rule 27 of the Rules of 1989, it is too late in the day for the respondents to deprive the Petitioner of the interest legitimately accrued on the investment after the maturity of the said certificate. At best applying for issuance of NSC in the name of proprietorship firm was an irregularity which is not of such nature to deprive the Petitioner of legitimate interest accrued thereon. If we accept the contention of the respondents, it would result in gross hardship to the Petitioner."

The Court noted that if the certificate has been issued as a result of an oversight or a mistake, the authority concerned, should have rectified it immediately thereafter. Allowing the authority to deprive the Petitioner of the interest which has legitimately accrued would be grossly inequitable.

10. The second judgment of the Division Bench was delivered on 9th October 2006 in **Mulund Ambe Maiya Co-operative Housing Society Ltd. vs. Union of India** (Writ Petition 3392 of 2004). In that case, a Co-operative Society had reinvested its moneys in Kisan

Vikas Patra Certificates. On the date of maturity, payment was refused on the ground that as a result of the amendment to the Kisan Vikas Patra Rules, a certificate could not be issued save and except in favour of a trust, or an individual. The Division Bench noted that this was not brought to the attention of the Petitioner either at the time of purchase or at any subsequent period in time so as to enable the Petitioner to withdraw the amount. The Court observed as follows:

> "We are clearly of the opinion that the Respondent cannot enrich itself at the cost of the citizen who invested the monies in their scheme and was not informed on that date or subsequently till the amount matured that amount could not be invested."

On the other hand, reliance has been placed on behalf of the Respondents on a judgment of a Learned Single Judge of the Gujarat High Court in **Devang Co-operative Housing Society Ltd. vs. Sub Post Master** (Special Civil Application 2877 of 2003 decided on 14th July 2004). Before the Gujarat High Court, the Petitioner which was a Co-operative Society registered under the Gujarat Co-operative Societies' Act, 1961 had invested in Kisan Vikas Patra Certificates. The amount due on maturity was not returned on the ground that the

Petitioner was not entitled to the payment of interest since the certificate could not have been issued in favour of a Co-operative Society. The Learned Single Judge of the Gujarat High Court held that prescribing the beneficiaries under the scheme was a matter of policy for the Union of India. Once the beneficiaries were prescribed in Rule 6 of the Rules made under the statute, the category of the beneficiaries could not be expanded any further. The Learned Single Judge placed reliance purportedly on Rule 13 to hold that the right of an unauthorised, improper or irregular purchaser to earn interest on the principal amount had been taken away. The petition was accordingly dismissed by the Gujarat High Court.

11. Rule 3 of the Kisan Vikas Patra Rules, 1988 stipulates that the provisions of the Post Office Savings Certificate Rules, 1960, so far may be, shall apply in relation to matters for which no provision has been made in the former Rules. Rule 16 of the Kisan Vikas Patra Rules, 1988 contains inter alia, a provision for the rectification of clerical or arithmetical mistakes with respect to a certificate provided that it does not involve a financial loss to the Government. Rule 17

empowers the Central Government in case of undue hardship, for reasons to be recorded in writing, to relax the requirements of any of the provisions contained in the Rules, in a manner not inconsistent with the provisions of the Act. The Post Office Savings Certificates Rules, 1960, contain a specific provision – Rule 13 – for governing what are described as excess or irregular holdings. Rule 13 provides as follows :

> "13. Excess or irregular holdings:- (1) Any certificate purchased or acquired in excess of the limits prescribed in these rules or in the old rules or in contravention of these rules shall be encashed by the holder as soon as fact of the holding being in excess of the limit or in contravention of these rules is discovered and no interest shall be paid on either the excess holding or any holding in contravention of these rules. Provided that the holding shall not be considered in excess of the limit prescribed in these rules or in the old rules if it is due to any of the following reasons, namely:
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> (a) inheritance;
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> (b) award by the Government for meritorious services;
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> (c) survivorship in the case of joint holdings;
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> (d) statutory devolution; and
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> (e) nomination.
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> Provided further that where the Central Government is satisfied that such purchase or acquisition of

> certificates is due to a bona fide error on the part of the holder thereof, it may authorise payment of simple interest on the face value of the certificate at the same rate as is admissible for the time being in force for the type of saving accounts in the post office savings bank with which such holder is entitled to open under the provisions of the Post Office Savings Account Rules, 1981."

The Kisan Vikas Patra Rules, 1988 do not make any specific provision in respect of irregular holdings. As already noted earlier, there is a provision in Rule 16 only for rectification of clerical or arithmetical mistakes with respect to a certificate and a provision for relaxation in Rule 17 on the ground of undue hardship. Hence, in view of the provisions of Rule 3, Rule 13 of the Post Office Savings Certificates Rules, 1960 would have to be read in conjunction with Kisan Vikas Patra Rules, 1988. Rule 13 specifies that a certificate which has been acquired in contravention of the Rules, shall be encashed by the holder as soon as the fact of the holding being in excess of the limit or in contravention of the Rules is discovered and, no interest shall be paid on the holding in contravention of the Rules. The effect of sub-rule (1) of Rule 13 is to prohibit the payment of interest on excess or irregular holdings in contravention of the Rules.

12. This Court in the exercise of its constitutional jurisdiction under Article 226 of the Constitution cannot issue a direction or grant relief which is prohibited by statute or by Rules which have a statutory character. There is no challenge to the statute or to the rules. There is no dispute in the present case about the fact that as a result of the amendment brought in the Kisan Vikas Patra Rules, 1988, with effect from 1st April 1995, the Petitioner which is a Co-operative Society was ineligible to purchase, acquire or hold a certificate under the Rules. The acquisition was in contravention of the Rules. Rule 13(1) mandates that no interest shall be paid on any holding in contravention of the Rules. The provisions of Rule 13 of the Post Office Savings Certificates Rules, 1960 were not drawn to the attention of the Division Bench in **Romeo Sam Arambhan Vs. Union of India** (supra). The judgment of the Division Bench has proceeded on the equitable principle that though the Petitioner there, which was a proprietary firm, was at fault in applying for issuance of Kisan Vikas Patra certificates despite its ineligibility, the Postal Authorities were to be equally blamed in not verifying the application.

There can be no manner of doubt that the equitable principle which has been adverted to by the Division Bench would be significant value in the absence of a statutory provision. However, a writ Court cannot grant relief on the foundation of an equitable principle, in the face of a clear statutory prohibition contained either in the parent statute or the rules framed thereunder. The attention of the Division Bench was not drawn to the mandatory stipulations contained in Rule 13(1). The subsequent judgment of the Division Bench dated 9th October 2006 (referred to earlier), followed the previous judgment in **Romeo Sam Arambhan** again without a reference to the provisions contained in Rule 13. The provisions of Rule 13 have, it must be emphasized, been noted in the judgment of the Learned Single Judge of the Gujarat High Court in **Devang Co-operative Society's** case (supra). Though the judgment of the Gujarat High Court proceeds on the basis that Rule 13 is a part of the Kisan Vikas Patra Rules, 1988, that would not strictly speaking be correct since, as already noted above, Rule 13 is a part of the Post Office Savings Certificates Rules, 1960. That however, does not make any substantive difference since Rule 3 of the Kisan Vikas Patra Rules,

1988, stipulates that the Post Office Savings Certificates Rules, 1960 shall apply to eventualities that are not contemplated by the Kisan Vikas Patra Rules.

13. There is undoubtedly a great element of hardship involved in cases such as the present. The Petitioner is a Co-operative Society formed of the employees of Nicholas Piramal India Ltd. and the proceeds which were invested with the Third Respondent were obviously moneys belonging to the collective body of workmen. There is nothing on the record or in the reply filed by the Respondents before the Court to indicate that the investment was not bona fide or that it was made with a conscious or willful disobedience of the stipulation in regard to eligibility. As noted earlier, the moneys were accepted by the Postal Department and KVP Certificates were issued to the Petitioner. The moneys remained with the Postal Department throughout the term of the deposit and it was only after the deposit had matured that an objection was made to the repayment of the proceeds on the ground that the Petitioner was ineligible to purchase the certificate in the first place. In such case, it is only to be expected

that an investment which is made in contravention of the Rules should be expeditiously notified to the depositor and the amount be refunded so as to obviate a situation such as the one which has arisen in the present case. The Postal Department has stated in its affidavit that it is flooded with a heavy volume of work. That cannot be any excuse for the Government of India to treat investments in such a callous manner. If the investor is not eligible to make the investment, this must be pointed out either when the application for deposit is made or at any rate, as expeditiously as possible so as to remedy the situation. Waiting for the entire duration of the deposit to expire before raising an objection does not speak of good governance. Good governance in a civil society must be marked by a sense of despatch and certainty. Though this Court has in the considered exercise of its jurisdiction under Article 226 found itself unable to grant relief in view of the substantive provisions of sub-rule (1) of Rule 13, we must express our strong disapproval of the manner in which the Postal Department acted in the present case. The Union Government must take steps to issue administrative instructions that would obviate a situation such as this which resulted from a failure of the Postal

Department to act with alacrity.

14. The proviso to Rule 13(1) provides some measure of a remedy that can be made available in a case such as the present. The proviso stipulates that where the Central Government is satisfied that the purchase or acquisition of certificate is due to a bona fide error on the part of the holder of the certificates, it may authorise payment of simple interest on the face value of the certificate, at the same rate, as is admissible for the time being in force for the type of saving accounts in the Post Office Savings Bank which such holder is entitled to open under the Post Office Savings Account Rules, 1981. We are of the view that this is a fit and proper case where the benefit of the proviso to Rule 13(1) should be granted to the Petitioner and a direction should be issued to the First Respondent accordingly. Apart from the proviso to Rule 13(1), as we have noted earlier, the Kisan Vikas Patra Rules, 1988 inter alia empower the Central Government in Rule 17 to relax the requirements of the provisions contained in the Rules, where the Central Government is satisfied of the undue hardship that may be caused to the holder of the certificate, provided

that this should not be in a manner inconsistent with the provisions of the Act. The power of relaxation is not vested with the Court but with the Central Government and the only appropriate direction which could be issued in that regard to the Central Government is to consider as to whether the power of relaxation should be exercised in the facts of the present case.

15. In the circumstances, we dispose of this Writ Petition with the following directions:

-(i) The Petitioner would, in terms of the provisions contained in the proviso to Rule 13(1) of the Post Office Savings Certificates Rules, 1960 (as made applicable by virtue of Rule 3 of the Kisan Vikas Patra Rules, 1988), be entitled to interest at the applicable rate as stipulated therein from the date of the investment until the date of maturity;

-(ii) The aforesaid payment shall be made to the Petitioner within a period of four weeks from today;

-(iii) The directions contained in clauses (i) and (ii) above shall be without prejudice to the rights of the Petitioner to submit a representation to the Central Government to exercise the power of relaxation with reference to the provision of Rule 17 of the Kisan Vikas Patra Rules, 1988. In the event that such an application is made within a period of four weeks from today, the Central Government shall consider the representation in accordance with law and issue a communication to the Petitioner, recording reasons for the decision to grant or deny, as the case may be, the benefit of the relaxation. Such a decision shall be arrived at within a period of three months of the receipt of the representation by the Competent Authority. In the event that the Central Government favourably considers the request made on behalf of the Petitioner, due credit shall be given for the payment of interest that has been effected in compliance with the provision contained in clause (i) of this order.

16. The Petition shall stand partly allowed in the aforesaid

terms. In the facts and circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE.

DR. D.Y. CHANDRACHUD, J.